



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1995

Mr. David R. Gipson  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR95-1082

Dear Mr. Gipson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35962.

The Texas Department of Agriculture (the "department") received a request for an investigative report relating to a pesticide application. You have provided a copy of the investigative report, the majority of which you have released. You claim, however, that portions of the report and attached medical records are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08 provides in pertinent part

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than persons . . . acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

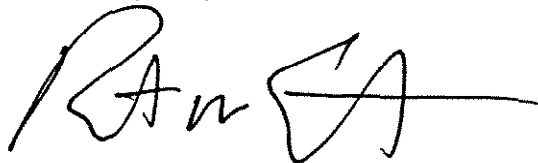
In addition, section 5.08(j)(3) provides for further release of confidential medical records obtained with a valid consent for release, only if the disclosure is "consistent with the authorized purposes for which consent to release the information was obtained." The submitted documents contain medical records created by a physician. This information is made confidential by section 5.08(b). See Open Records Decision No. 565 (1990). Similarly, information in the Pesticide Impact Evaluation that have been extracted from the medical records is made confidential by section 5.08(c). Thus, further release is authorized only as outlined in subsections (c) and (j)(3) of section 5.08 of the Medical Practice Act. We have marked the information made confidential under the Medical Practice Act.

Section 552.101 of the Government Code also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See 540 S.W.2d at 685.

Although not all medically related information is protected by common-law privacy, Open Records Decision No. 478 (1987), information relating to certain intimate medical conditions may be excepted from disclosure. See Open Records Decision No. 262 (1981). A portion of the information you have submitted contains medical information that must be withheld from disclosure under common-law privacy. We have marked this information accordingly.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "RWS" followed by a stylized flourish.

Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/rho

Ref.: ID# 35962

Enclosures: Marked documents

cc: Mr. Roger K. Haldenby  
Boll Weevil Program Director  
Plains Cotton Growers Inc.  
4510 Englewood  
Lubbock, Texas 79414  
(w/o enclosures)